

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 08/18/2020

TIME: 08:20:00 AM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Matthew P. Guasco

CLERK: Miriam Hernandez

REPORTER/ERM: None

CASE NO: **56-2019-00532594-CU-PO-VTA**

CASE TITLE: **Palacios vs. Lanthier**

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Demurrer (CLM) to Cross Complaint

MOVING PARTY: Christopher Plue

CAUSAL DOCUMENT/DATE FILED: Demurrer to Cross Complaint, 07/08/2020

APPEARANCES

Joette Carini, counsel, present for Defendant, Cross - Complainant(s) telephonically.

Douglas J. Petkoff, counsel, present for Cross - Defendant(s) telephonically.

At 08:51 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Matter submitted to the Court without argument, with parties submitting to the Court's tentative.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

Meet & Confer

The Court finds the parties met and conferred as required by Code of Civil Procedure section 430.41.

Legal Principles

In ruling on a demurrer, the Court treats all properly pleaded facts in the complaint as admitted. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.) The demurrer is limited to the four corners of the complaint and any additional facts which are properly the subject of judicial notice. (Code of Civ. Proc., § 430.30, subd.(a).) If there is a reasonable possibility that a pleading deficiency can be cured, it is an abuse of discretion for the Court to deny leave to amend. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

Demurrers on the ground of uncertainty are disfavored and should only be sustained in the event the complaint is so vaguely and deficiently pleaded that the demurring defendant reasonably cannot intelligently respond to the complaint. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616, 17 Cal.Rptr.2d 708.)

Complaints and cross-complaints must allege facts, not merely conclusions, supporting each cause of action. (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1509, 85 Cal.Rptr.3d 268.)

Ruling on Demurrer

The Court SUSTAINS the general demurrer of Plue to Lanthier's Cross-Complaint WITH LEAVE TO AMEND. Lanthier's Cross-Complaint against Plue contains virtually no specific factual allegations giving rise to a claim of equitable indemnity or comparative contribution against Plue arising from the fire loss which is the subject of this litigation. (See *Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 37 Cal.Rptr.3d 528; *Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 34 Cal.Rptr.3d 157.)

The Court declines Plue's request to deny Lanthier the opportunity to cure the above-described defect by amendment. The Court concludes it would be an abuse of its discretion to not permit Lanthier to amend the Cross-Complaint to plead sufficient facts, if any, supporting the indemnity and declaratory relief causes of action against Plue. The Court cannot conclude at this juncture that any such effort by Lanthier necessarily would constitute a "sham pleading." Accordingly, leave to amend is granted. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

Lanthier shall serve and file a First-Amended Cross-Complaint consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court by no later than **September 8, 2020**.

Counsel for Plue shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court.

Setting of a Case Management Conference

Ms. Carini informs the Court that due to the court closure, the Case Management Conference previously set in this matter for 04/24/20 was vacated, and therefore, makes an oral request to set a new date.

The Court finds/orders:

Case Management Conference is scheduled for 10/21/2020 at 08:30 AM in Department 20. Telephonic appearance by CourtCall is required until further notice by the court.

A Joint Case Management Conference Statement is to be filed prior to the hearing per statute.

Clerk to give notice.